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 23 THE WET SEAL, INC.

24 UNITED STATES DISTRICT COURT

25 FOR THE NORTHERN DISTRICT OF CALIFORNIA

26 SAN JOSE DIVISION

27 LEVI STRAUSS & CO.,

28 Case No. C 07-5896 RS

Plaintiff,

**JOINT CASE MANAGEMENT
 STATEMENT AND [PROPOSED]
 ORDER**

v.

29 THE WET SEAL, INC.,

**CMC DATE: March 19, 2008
 CMC TIME: 2:30 p.m.**

Defendant.

30
 31 Plaintiff Levi Strauss & Co. ("LS&CO.") and defendant The Wet Seal, Inc. ("Wet
 32 Seal") jointly submit this Case Management Statement and Proposed Order.

33 1. **Jurisdiction and Service.**

34 LS&CO.'s first, second and third claims arise under the Lanham Act. This Court has

35

1 subject matter jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331, 1338(a) and
 2 1338(b) and 15 U.S.C. §1121, and supplemental jurisdiction over LS&CO.'s state law claims
 3 pursuant to 28 U.S.C. §1337. No issue exists as to personal jurisdiction or venue, and no
 4 parties remain to be served.

5 **2. Facts and Bases for Claims and Defenses.**

6 Plaintiff's Claims: LS&CO. is a Delaware corporation which has its principal place of
 7 business in San Francisco, California. LS&CO. is the sole owner of the Arcuate Stitching
 8 Design Trademark ("Arcuate Trademark"), which LS&CO. has used continuously in interstate
 9 commerce since 1873 and which is the oldest apparel trademark still in use in the United
 10 States. The Arcuate Trademark is federally registered and incontestable. Examples of
 11 LS&CO.'s use of the Arcuate Trademark on jeans are attached as Exhibit A to the Complaint,
 12 and LS&CO.'s federal and California registrations for the Arcuate Trademark are attached to
 13 the Complaint as Exhibit B.

14 Wet Seal is a Delaware corporation with its principal place of business at 26972
 15 Burbank, Foothill Ranch, California 92610. Wet Seal distributes, produces and manufactures
 16 jeans and other apparel under the brand name WET SEAL. Wet Seal sells WET SEAL brand
 17 jeans at its chain of retail stores and on its website along with other brands of jeans, including
 18 without limitation YOUNIQUE and ZANA-DI. These jeans are sold in this judicial district
 19 and throughout the United States. Wet Seal has distributed WET SEAL, YOUNIQUE, and
 20 ZANA-DI brand jeans that display stitching designs that LS&CO. believes are confusingly
 21 similar to LS&CO.'s Arcuate Trademark and violate LS&CO.'s rights in its mark. LS&CO.'s
 22 complaint states claims against Wet Seal for trademark infringement, dilution and unfair
 23 competition under federal and California law.

24 Defendant's Defenses:

25 Wet Seal has sold jeans with pocket stitching, as shown in LS&CO.'s complaint, but
 26 denies that it manufactures or distributes jeans or any of the other products it sells. Wet Seal
 27 further contends that LS&CO.'s Arcuate Trademark is a weak mark and there is significant

1 third party use of pocket stitching similar to LS&CO.'s Arcuate Trademark. Wet Seal also
 2 contends that none of the accused pocket stitching is confusingly similar to LS&CO.'s Arcuate
 3 Trademark. Wet Seal further contends that LS&CO.'s Arcuate Trademark is not famous and
 4 that the accused pocket stitching does not dilute LS&CO.'s Arcuate Trademark. Wet Seal
 5 additionally contends that LS&CO. has not suffered any damages.

6 **3. Issues in Dispute.**

7 The issues (both factual and legal) set forth below are not meant to be final or
 8 exhaustive, and the parties reserve their rights to reformulate these issues or include other
 9 appropriate issues as they develop or become known to the parties through the course of
 10 discovery and investigation. Furthermore, the characterization of an issue as "factual" or
 11 "legal" is not necessarily a concession that it is not the other or both.

12 Factual Issues:

13 a. Whether Wet Seal's manufacture, distribution, and/or sale of products
 14 bearing the stitching designs at issue is likely to cause confusion, mistake or deception among
 15 consumers and potential consumers.

16 b. Whether Wet Seal's manufacture, distribution, and/or sale of products
 17 bearing the stitching designs at issue dilutes or is likely to dilute LS&CO.'s Arcuate
 18 Trademark.

19 c. Whether and to what extent LS&CO. has been damaged by Wet Seal's
 20 manufacture, distribution, and/or sale of products bearing the stitching designs at issue.

21 d. Whether the stitching designs at issue are covered by the 1998
 22 Settlement Agreement between LS&CO. and Wet Seal.

23 e. Whether the stitching designs at issue are covered by the 2004
 24 Settlement Agreement between LS&CO. and Wet Seal.

25 f. Whether LS&CO.'s Arcuate Trademark is famous.

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1 Legal Issues:

2 a. Whether Wet Seal's manufacture, distribution, and/or sale of products
 3 bearing the stitching designs at issue constitutes infringement and dilution of LS&CO.'s
 4 Arcuate Trademark and unfair competition under the federal Lanham Act, 15 U.S.C. § 1051 *et*
 5 *seq.*

6 b. Whether Wet Seal's manufacture, distribution, and/or sale of products
 7 bearing the stitching designs at issue constitutes trademark infringement and unfair competition
 8 under California common law and/or Cal. Bus. & Prof. Code §§ 14320, 17200 *et seq.*, and
 9 dilution of LS&CO.'s Arcuate Trademark under Cal. Bus. & Prof. Code § 14330.

10 c. Whether LS&CO. is entitled to an accounting and recovery of Wet
 11 Seal's profits on account of the infringement under the federal Lanham Act, 15 U.S.C. § 1117
 12 (a) and/or common law.

13 d. Whether Wet Seal has breached the 1998 Settlement Agreement
 14 between LS&CO. and Wet Seal, by manufacturing, distributing, and/or selling jeans that
 15 display stitching designs that are substantially similar to LS&CO.'s Arcuate trademark without
 16 LS&CO.'s authorization.

17 e. Whether Wet Seal has breached the 2004 Settlement Agreement
 18 between LS&CO. and Wet Seal, by manufacturing, distributing, and/or selling jeans that
 19 display stitching designs that are substantially similar to the design covered by the 2004
 20 Settlement Agreement.

21 f. Whether LS&CO.'s claims of unfair competition under California
 22 common law and/or Cal. Bus. & Prof. Code §§ 14320, 17200, *et seq.* are preempted by federal
 23 unfair competition law.

24 **4. Motions.**

25 The parties anticipate that they may file dispositive motions, depending on the evidence
 26 that is produced during the discovery process.

27 **5. Amendment of Pleadings.**

1 The parties have agreed to a deadline of April 30, 2008, to add additional parties.

2 **6. Evidence Preservation.**

3 LS&CO. has taken steps, including the suspension of normal document destruction
4 programs and placement of a litigation hold for documents, including electronically stored
5 documents, to preserve evidence relevant to the issues reasonably evident in this action,
6 including interdiction of any document destruction program and any ongoing erasure of emails,
7 voice mails and other electronically recorded materials.

8 **7. Disclosures.**

9 LS&CO. has timely complied with the initial disclosure requirements of Fed. R. Civ. P.
10 26. The parties have agreed to a date of April 7, 2008 for Wet Seal's initial disclosures.

11 **8. Discovery.**

12 The parties expect to agree upon a stipulation regarding the entry of a protective order
13 governing documents and information to be disclosed in the course of this litigation.
14 Thereafter, the parties anticipate exchanging document requests and other written discovery
15 and cooperating in arranging depositions of pertinent party and non-party witnesses. The
16 parties have agreed to modify the timing for Wet Seal's initial disclosures under FRCP Rule
17 26(a). The parties have not agreed to any limitations on the subject matter of discovery, and
18 are to complete discovery within the time limits to be set by the court. Should the need arise at
19 a later date to amend these deadlines, they may be modified by stipulation and order or motion
20 supported by good cause.

21 **9. Class Actions.**

22 This is not a class action.

23 **10. Related Cases.**

24 There are no related cases pending in this Court.

25 **11. Relief.**

26 Pursuant to 15 U.S.C. § 1117(a), LS&CO. will seek damages in the amount of Wet
27 Seal's profits from the sale of infringing goods. Given that discovery with respect to damages
28

1 has not yet begun, LS&CO. is unable to compute damages at this time. LS&CO. may seek
 2 recovery of extraordinary damages and recovery of its attorneys' fees in the event that
 3 discovery shows Wet Seal's conduct to have been willful. LS&CO.'s complaint also seeks
 4 injunctive relief.

5 **12. Settlement and ADR.**

6 The parties request referral to mediation as their ADR process.

7 **13. Consent to Magistrate Judge For All Purposes.**

8 The parties consent to have a magistrate judge conduct all further proceedings
 9 including trial and entry of judgment.

10 **14. Other References.**

11 The parties do not believe the case is suitable for reference to binding arbitration, a
 12 special master or magistrate judge, or to the Judicial Panel on Multidistrict Litigation.

13 **15. Narrowing of Issues.**

14 The parties do not believe that the issues in dispute can be narrowed.

15 **16. Expedited Schedule.**

16 The parties do not believe that this type of case can be handled on an expedited basis
 17 with streamlined procedures.

18 **17. Scheduling.**

19 The parties propose the following discovery and court dates:

20 Fact Discovery Cutoff:	October 31, 2008
21 Expert Disclosures:	November 14, 2008
22 Rebuttal Expert Disclosures:	December 15, 2008
23 Expert Discovery Cut-off:	January 15, 2009
24 Last Date for Filing of Dispositive Motions:	February 13, 2009
25	(to be heard by March 18, 2009)
26 Final Pretrial Conference Date:	April 15, 2009
27 Trial Date:	April 29, 2009

1 **18. Trial.**

2 The parties expect that the trial will last five to seven court days. LS&CO. and Wet
3 Seal have demanded a jury. The parties do not believe bifurcation is a viable alternative in this
4 case.

5 **19. Disclosure of Non-party Interested Entities or Persons.**

6 LS&CO. and Wet Seal have filed the "Certification of Interested Entities or Persons"
7 required by Civil Local Rule 3-16 certifying that other than the named parties there are no
8 other interested entities or persons.

9 **20. Other Items.**

10 None.

11

12 DATED: March 12, 2008

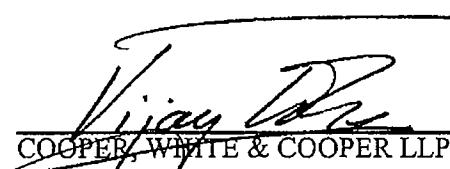
Respectfully submitted,

13
14 
By: _____

15 Raquel Pacheco
16 TOWNSEND AND TOWNSEND AND CREW
17 LLP

18
19 Attorneys for Plaintiff
20 LEVI STRAUSS & CO.

21
22 DATED: March 11, 2008

23
24 
By: _____

25 T. J. Cooper
26 COOPER, WHITE & COOPER LLP

27 Attorneys for Defendant
28 THE WET SEAL, INC.

25 61300264 v1

ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated: , 2008

THE HONORABLE RICHARD SEEBORG
UNITED STATES MAGISTRATE JUDGE